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FCC L R O C K

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May 15, 1996
Office of the Secretary
Federal Communications Commission
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Room 222
Washington, D.C. 20554

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Comments In the Matter of -

Implementation of the Local Competition
Provisions on the Telecommunications Act
of 1996

CC Docket No. 96-98

Summary

The enclosed comments are from the perspective of a new entrant that will provide local competitive services. Our intentions are to dedicate and focus company resources on providing local competitive services as soon as the local competition provisions of the Telecommunications Act of 1996 are implemented

As a new entrant seeking to take full advantage of the business opportunities, we have several comments to the proposed rules. Our overall strategy is simple - strong, quick, aggressive, local guerrilla warfare to capture as much market share as possible. Our competitive advantage lies in our ability to act quickly and decisively in each local market.

Our greatest fear is that regulatory procedures, stalling tactics, and large company red tape will unfairly hamper our efforts. For example, having the incumbent LEC determine the costs of service elements and discounts to be given to local competitive providers should be fairly straight forward. That information is on someone's computer spreadsheet. Yet we note that last week NYNEX proposed 10% and 7% discounts for residential and business service respectively. AT&T countered that the "true" NYNEX costs should yield discounts of between 20% and 50%. Without strong FCC authority and procedures arguments like this will be long and drawn out. A few large carriers fighting over the local "pot of gold" will keep smaller players on the sidelines. We want the FCC to adopt rules and procedures that favor the swift entry of smaller companies into the local market. As a new entrant and new business venture it is imperative that "true" costs be provided in a timely manner.

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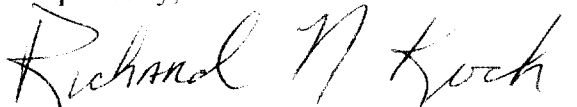
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Richard N. Koch May 15, 1996

Whenever possible we strongly urge the FCC to assume as much control in any matter or issue pertaining to the implementation of the Telecommunications Act. It will be a mistake to allow local LECs and state regulatory commissions to decide any issues that can and should be in the realm of the FCC. As an entrant that plans to compete in many states it will be unfair and costly for us to have to deal with multiple timetables, decisions, rules and regulatory procedures. We want to avoid as much as possible having to "play the game," before each state PUC, the learning curve is just too great. Also, issues that are with the jurisdiction of individual states should have a swift appeal process that allows small new entrants to have a voice as loud and as powerful as the large established carriers. We are looking for parity on a federal and state level. We believe that the more authority that lies with the federal level the easier it will be for us to compete on a local level.

Enclosed are specific comments regarding a few of the issues. As a new entrant at the beginning of the learning curve we are not that experienced to render expert comments on all matters. We also think it is a good idea to build into your procedures some type of procedural mechanism that will be in affect after the August rule setting that will allow for monitoring, continual comment from all local competitors, and provide a mechanism for necessary changes and or modifications to the rules. We ask the FCC to assume as much federal power implementing both the intent and the letter of the Act thus providing a level non-discriminatory playing field for new entrants such as ourselves. Given that platform, savvy marketing and sales organizations, such as ours, will be able to provide local competitive choices for American consumers.

Respectfully,

A handwritten signature in black ink, reading "Richard N. Koch". The signature is written in a cursive, flowing style with a large initial 'R'.

Richard N. Koch

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II. PROVISIONS OF SECTION 251

A. Scope of the Commission's Regulations

It is clear that Congress is empowering the Commission to be very pro-competitive, promote deregulation and therefore should by all means establish a national framework for the enactment of the Telecommunications Act. If the FCC does not adopt explicit rules that cover all the critical issues, the entire Act will become a series of local battles between incumbent LECs and large carriers. The ultimate prize of consumer dollars is worth the fight to these large companies. Smaller new entrants, without strong Federal rules, will only sit on the sidelines and watch and wait. Quick competition will not come to local markets without a firm set of national rules that will allow swift opening of all markets to competition.

From the perspective of a small business that will be looking to attract investment capital, it is imperative that the framework under which we will operate is set in place and enforced on a national level as quick as possible. There should be one regulatory approach for all states and competitors. In the case of local and regional differences the Commission should establish procedures such that local and regional differences can be addressed as a consequence of local competitors bringing the issues before the Commission. In other words, let the Commission make the rules and let the local competitors point out where there should be an exception or modification. In this manner local competition will happen swiftly which is the intent of Congress.

State regulatory authority on such issues as local rates are the consequence of years of lobbying efforts by the local LECs. As a new local competitor we will be at a disadvantage if we have to begin such a process. As long as there is a level, non-discriminatory playing field the free market will drive rates down. Congress is opening the local markets to competition which in theory should lower prices for the consumer. It may be unnecessary for the incumbent LECs to gain approval for local rates, since competition should keep the pressure on, to keep the rates low. Perhaps it should only be necessary for state approval for rate increases not decreases.

B. Obligations Imposed by Section 251 (c) "Incumbent LECs"

Our comment here refers to the issue of imposing on carriers that are not designated as incumbent LECs, any of the obligations the statute imposes on incumbent LECs. There should be some reciprocal obligations on all carriers in the local market. However, not at the beginning since new entrants will be at a disadvantage to start a business and provide the incumbent LEC reciprocal items. There should be a minimum market share formula applied as to whether any carrier has such requirements

2. Interconnection, Collocation, and Unbundled Elements **c. Unbundled Network Elements**

This is extremely important to new entrants. It is the network elements that are the competitive building blocks for new entrants. The Commission should make every effort to identify and quantify network elements that incumbent LECs should unbundle and make available to requesting carriers. The Commission should pay special note to the costs associated with the elements so that they are offered in a timely manner without unnecessary delay. The Commission should also break down network elements into their component parts. If any network element can stand alone or can be used to enhance another, it should be offered to competing carriers or resellers.

The network elements need to be available to competing entrants on as small and defined basis as possible. This will allow the competition to develop new and unique applications. Small competitors will be able to find a market niche by offering a specialized service based upon the right combination of network elements. We encourage the Commission to produce a large, varied, and detailed shopping list of unbundled network elements as possible.

As new features are developed they should be made available to competing carriers. It is reasonably anticipated that competitors will need to keep an equal level of services as those provided by the incumbent LEC. These include the incumbent LECs' advanced call processing features and all software building blocks used by incumbent LECs. It is extremely important to be able to offer competitive services which include every service and feature offered by the incumbent LEC. The Commission should have the authority to define "wholesale rates" as they apply to unbundled network elements. From a business case point of view it is cumbersome and anti-competitive to have essentially the same network service elements offered at different rates by different incumbent LECs.

d. Pricing of Interconnection, Collocation, and Unbundled Network Elements

We believe that the Commission should and does have the authority to adopt pricing rules to ensure that rates for interconnection, unbundled network elements, and collocation are just, reasonable, and nondiscriminatory. The Commission is the only body that will protect the little guy in the market.

We believe that all unbundled elements should be provided on a cost basis and that incumbent LECs not be able to charge more because they have chosen to create different classes of service utilizing the same network elements. There are two main classes of service one for residential and one for business. Why should a competing carrier or reseller be bound to provide only two classes of service? Free competition should allow a competitor utilizing the unbundled network elements and loops to create other classes of service. The public benefits from this competitive freedom.

Incumbent LEC's should not be able to include or recover any historical costs associated with any service or network elements. It is simply not fair for them to have implemented these features, presumably amortized the costs, made a profit on them and then profited again by passing historical costs onto new market entrants.

The Commission seeks definition of "nondiscriminatory". It can have only one. Every carrier or reseller that wants to enter the local market and compete with the incumbent LEC must have the same terms and conditions of every other negotiated agreement. Sections 251(c)(4), 252(e), and 252(I) leave no shades of gray. This is the very heart of the Telecommunications Act of 1996. There should be no price discrimination at all. It is true, that if there is any discrimination, then small aggressive entrants into the market will be at a tremendous disadvantage. The spirit and intent of the of the Act will be undermined if large carriers can negotiate "sweet deals" with each other to the detriment of smaller entrants.

3. Resale Obligations of Incumbent LECs

There should be no limitations imposed by incumbent LECs with respect to services offered for resale. We, as a small new entrant, should not have to be restricted by the incumbent LEC in any way. Competition is thrown out the window if the entity you are competing with is allowed to make restrictions and rules that directly affect your ability to compete. All the services including discounted and promotional offerings should be available to the new entrants at wholesale rates. Allowing full access to all unbundled network elements, will allow the new competitors to offer competitive discounted and promotional offerings. The Commission should guard against the incumbent LEC deciding to offer services and promotional offerings at a loss in order to gain an unfair market advantage. Therefore everything the incumbent LEC offers at retail rates should also be available to competitors at wholesale rates.

Richard N. Koch